

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MOSES LUGO and CHERYL SEATON,

Plaintiffs,

- against -

THE CITY OF TROY, NEW YORK,

Defendant.

ANSWER

Civil Case No.: 1:19-cv-00067
(GLS/TWD)

Defendant, THE CITY OF TROY, NEW YORK, by and through its attorneys, Napierski, VanDenburgh, Napierski & O'Connor, LLP, for an Answer to plaintiffs' Complaint, states the following upon information and belief:

JURY DEMAND

1. Answering defendant hereby demands a trial by jury as to all issues so triable.

PRELIMINARY STATEMENT

2. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Complaint.

3. Denies the allegations contained in paragraph "2" of the Complaint.

JURISDICTION

4. Denies the allegations contained in paragraphs "3" and "4" of the Complaint and refers all issues of law to the Court.

VENUE

5. Admits that defendant is located within the confines of the Northern District of New York, and otherwise denies the allegations contained in paragraph "5" of the Complaint.

PARTIES

6. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs "6", "7" and "8" of the Complaint.

7. Admits the allegations contained in paragraph "9" of the Complaint.

8. The allegations contained in paragraph "10" of the Complaint involve an issue of law to which no response is required. To the extent an admission or denial is required, defendant denies the allegations.

STATEMENT OF FACTS

9. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "28", "29" and "44" of the Complaint.

10. Denies the allegations contained in paragraphs "22", "30", "31", "36", "37", "38", "39", "40", "41", "42", "43", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "58", "59", "60", "61", "62", "63" and "64" of the Complaint.

11. Admits that there are public sidewalks, curb cuts, crosswalks, and road within the City of Troy, and otherwise denies the allegations contained in paragraph "23" of the Complaint.

12. The allegations contained in paragraphs "24", "25", "26", "27", "32", "33", "34 (a-h)", "35", "56" and "57" of the Complaint involve an issue of law to which no response is required. To the extent an admission or denial is required, defendant denies the allegations.

**AS AND FOR AN ANSWER TO THE FIRST CLAIM FOR RELIEF
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

13. Defendant re-alleges and incorporates herein all previous alleged paragraphs of the Answer.

14. The allegations contained in paragraphs "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "79", "82", "83" and "86" of the Complaint involve an issue of law to which no response is required. To the extent an admission or denial is required, defendant denies the allegations.

15. Denies the allegations contained in paragraphs "80", "81", "84" and "85" of the Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CLAIM FOR RELIEF
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973**

16. Defendant re-alleges and incorporates herein all previous alleged paragraphs of the Answer.

17. The allegations contained in paragraphs "88", "89", "90", "91", "92", "93", "94", "95" and "96" of the Complaint involve an issue of law to which no response is required. To the extent an admission or denial is required, defendant denies the allegations.

18. Denies each and every allegation in the Complaint not otherwise specifically admitted or denied.

AS AND FOR A FIRST DEFENSE

That the above-entitled action may not be maintained against the defendant as there has not been compliance with section 15-1 of the Troy City Code insofar as there has been no prior written notice of any unsafe, damaged, or dangerous condition.

AS AND FOR A SECOND DEFENSE

Plaintiffs have failed to name necessary party in this action.

AS AND FOR A THIRD DEFENSE

Defendant's liability, if any, shall be apportioned with any other such person causing or contributing to the total liability in accordance with each party's share of any such liability.

AS AND FOR A FOURTH DEFENSE

Plaintiffs are not entitled to injunctive relief.

AS AND FOR A FIFTH DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SIXTH DEFENSE

The defendant, The City of Troy, New York, is entitled to qualified immunity from the prosecution of this action.

AS AND FOR A SEVENTH DEFENSE

That at those times mentioned and described in the plaintiffs' Complaint, the defendant, The City of Troy, New York, and its officials, officers, and employees, were governmental officials performed discretionary functions and their conduct did not violate clearly established statutory or constitutional rights of which a reasonable man would or should have known and that by reason thereof they were qualifiedly immune from liability in this action.

AS AND FOR AN EIGHTH DEFENSE

Defendant has immunity from liability for determinations related to their allocation of limited public resources.

AS AND FOR A NINTH DEFENSE

Plaintiffs lack standing to bring this cause of action.

AS AND FOR A TENTH DEFENSE

The claims and causes of action set forth in the Complaint are barred by the applicable statute of limitations.

WHEREFORE, defendant The City of Troy, New York demands judgment dismissing the Complaint herein, together with attorneys' fees and the costs and disbursements of this action.

Dated: March 7, 2019

NAPIERSKI, VANDENBURGH,
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